In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 399

RICHARD C. PRICE, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The basic question presented by the petition is whether a union restrains or coerces employees, within the meaning of Section 8(b)(1)(A) of the National Labor Relations Act,[1] by suspending a member for filing with the National Labor Relations Board a petition for decertification of the union as the representative of the employees in the collective bargaining unit in which he works. The Board held that the union's

[1] Section 8(b)(1)(A) makes it an unfair labor practice for a labor organization "to restrain or coerce * * * employees in the exercise of the rights guaranteed in section 7." Section 7, in turn, guarantees employees the right "to form, join, or assist labor organizations," and also the right "to refrain from any or all of such activities."

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action did not violate Section 8(b)(1)(A) (154 NLRB 692), and the court of appeals sustained the Board's conclusion (Pet. 16–22).

The Board has held, however, that a union does violate Section 8(b)(1)(A) by disciplining an employee-member for filing unfair labor practice charges with the Board without first exhausting internal union procedures. Its rationale is that, since the agency may proceed against unfair labor practices only in response to charges filed with it, the right to file such charges is necessary for the vindication of rights guaranteed by Section 7, and therefore is protected by that Section; and that a union's disciplining of a member for filing a charge accordingly "restrains" or "coerces" him in the exercise of his Section 7 rights. See *Local 138, Int'l Union of Operating Engineers* (*Charles S. Skura*), 148 NLRB 679. In the present case the Board distinguished *Skura* on the ground that here the "union disciplinary action [was] aimed at defending [the union] from conduct which seeks to undermine its very existence" (154 NLRB at 696).

The Court of Appeals for the Third Circuit has rejected the Board's view that a union commits an unfair labor practice by disciplining a member for filing charges with the Board without exhausting internal union procedures. *Industrial Union of Marine and Shipbuilding Workers of America* v. *National Labor Relations Board*, 379 F. 2d 702. Simultaneously herewith, the Board is filing a petition for a writ of certiorari to review that decision.

Because of the close relation between the issue in this case and that in the case in which we are seeking review, we do not oppose the petition here.

Respectfully submitted.

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